

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1408 of 1998

RAM CHANDRA BAGRODIA

Versus

GUJARAT LEASE FINANCING LTD.

Appearance:

MR KS NANAVATI SR COUNSEL for
SINGHI & BUCH ASSO. for Petitioner
MR MIHIR THAKOR SR COUNSEL for
MR SS PANESAR for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of Order:-28/07/1999

C.A.V. ORDER

This revision application has been preferred by the original defendant against the order dated 23-7-1998 below exh. 9 in Summary Suit No. 4981/97 passed by the City Civil Judge, Ahmedabad directing the petitioner to deposit Rs.35,00,000/- in the Court within eight weeks from the date of the order.

2. Summary Suit NO. 4981/97 has been filed for recovery of Rs.2,64,57,162-64 against the petitioner as a guarantor. According to the plaintiff, the petitioner is a Managing Director of Gujarat Lease Financing Ltd., The petitioner executed a personal guarantee in favour of the plaintiff in which the petitioner has agreed and undertook to discharge the liability of the Gujarat Lease Financing Co. Ltd. independently.

3. The defendant has filed leave to defend vide exh. 12 and resisted the summons for judgment mainly on the grounds that

(i) the suit is barred by the period of limitation.

(ii) Personal guarantee as described in the plaint by the plaintiff is virtually not a guarantee bond.

(iii) The signature of the petitioner was obtained on the documents and he was not given any opportunity to understand the contents of the said documents.

(iv) The signature of the defendant was obtained on the document much before 17-10-94 as mentioned above as the stamp paper was purchased by the plaintiff on 4-8-1994 and the document was written on 17-10--94. With a view to bring the suit within the period of limitation, the date 17-10-1994 was mentioned on that document in the hand writing.

(v) The affidavit of the respondent - plaintiff for summons for judgment does not disclose the true and correct amount liable to be paid by the company. The affidavit is very vague and does not state true and correct amount to be recovered.

(vi) The suit is not for a liquidated sum which is due and payable by the Company. On other hand, it creates an impression that the suit is mainly for breach of an agreement whereby the plaintiff intends to recover the rent as well as damages in the form of penalty. The plaintiff and the Company have interse varied or changed the original conditions of the lease agreement for making payments. Certain developments with regard to outstanding lease rental was entered into between the plaintiff and the Company. The plaintiff had agreed to exercise one of the following options in discharge of the Company's liability towards lease rentable.

(A) Cumulative Redeemable Preference

Shares at a coupon rate of 14% to be redeemed in the beginning of 4th, 5th and 6th year or to be converted into equity after 3rd year.

(B) 15.5% Non Cumulative Debentures

with moratorium of 3 years with regard to payment of interest and principal and to redeem proportionately in the 4th , 5th and 6th year along with the interest with an option to convert into equity."

(vii) The plaintiff has replied under their

letter dated 7-7-97 addressed to the Company whereby they have confirmed the acceptance of one of the two options in view of the aforesaid developments without taking consent of the petitioner. The terms and conditions of the lease agreement have been varied or changed by the plaintiff and the Company. As such, the petitioner is legally discharged from the liabilities as a surety and hence plaintiff's suit against this defendant is not legally maintainable.

(viii) The suit is in respect of the lease agreement for plants and machineries which are in possession of the Company. The said plants and machineries have been taken as surety by the plaintiff. Thus, the plaintiff's claim is totally secured. Thus, the suit is not maintainable.

(ix) On the basis of the aforesaid objections, the learned counsel for the petitioner submitted that the defence of the petitioner is bona fide and is a triable issue which falls in the category of (a), (b) and (c) as enumerated in the principles laid down by the Apex Court in the case of M/s. Mechalec Engineers & Manufacturers Vs. M/s. Basic Equipment Corporation, reported in AIR 1977 SC 577, which reads as under :

"(a) If the defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he had a defence, yet, shows such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is

not entitled to judgment and the defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security."

(d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may the plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence."

As such, the Court below erred in granting conditional leave to defend.

4. On the contrary, learned counsel for the respondent contended that the defendant's case falls in the clause (e) of the principles laid down by the Apex Court as stated above. He has further submitted that if the Court has jurisdiction having regard to the facts and circumstances of the case to impose condition while granting leave to defend that would be its jurisdiction and even if there is some error it cannot be said to be jurisdictional error which is required to be corrected under Section 115 of the Civil Procedure Code. In this connection he has relied on the decision in the case of M/s. K.K. Arora & Sons. Vs. M/s. Meghraj & Sons, reported in 1987 (1) GLR 426, wherein the principle has been laid down which reads as under :

"The summary suits may be classified into three categories -

(i) where no leave to defend can be granted;

(ii) where unconditional leave to defend has to be granted; and

(iii) where conditional leave has to be

granted.

In a clear case, where unconditional leave is to be granted, there may not be any difficulty. However, in the third category of cases where the defendant may have some defence, at the same time, there may be circumstances showing that the defence is not bona fide, the Court has a discretion to impose condition. Such discretion cannot ordinarily be subject of revision under sec. 115 of the C.P.C. The trial Court has the jurisdiction to consider the question whether to grant or not to grant leave to defend or to grant conditional or unconditional leave to defend. The case where leave is refused would stand clearly on different footing than where leave is granted or conditional leave is granted. The Court has the jurisdiction having regard to the facts and circumstances of the case to impose the condition while granting leave to defend and that would be within its jurisdiction and even if there is some error, it cannot be said to be a jurisdictional error which is required to be corrected under sec. 115 of the C.P.C.

Moreover, after the amendment of sec.115 of the C.P.C. in 1976, there is a further restriction on the power of the High Court in entertaining revision applications on merely legalistic grounds. The power of the High Court is circumscribed by a further condition that there has to be a failure of justice or irreparable injury in addition to the jurisdictional and other basic errors contemplated under clauses (a) (b) and (c) of Sec. 115 of the C.P. Code. Even after the condition of an error under clause (a) (b) and (c) is satisfied, a further condition required by the proviso is to be satisfied that such an error has occasioned failure of justice or irreparable injury to the petitioner."

5. Learned counsel for the petitioner further relied on the case of the Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and another Vs. Ajit Prasad (Tarway, Manager (Purchase and Stores) Hindustan Aeronautics Ltd. Balanagar, Hyderabad, reported in AIR 1973 SUPREME COURT 76, wherein it has been held that the Court has jurisdiction to make the order. It is not the case that the first Appellate Court

exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction u/s 115 of the C.P. Code. The relevant portion of para 5 of the said judgment reads as under :

"It is not the conclusion of the High Court that the first appellate court had no jurisdiction to make[the order that it it made. The order of the first appellate court may be right or wrong, may be in accordance with law or may not be in accordance with law, but one thing is clear that it had jurisdiction to make the order. It is not the case that the first Appellate Court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction u/s 115 of the C.P. Code. wherein it has been held that the Court has jurisdiction to make that order . It is not the case that first Appellate Court exercised its jurisdiction either illegally or committed material irregularities. So, the High Court should not have interfered in the revisional jurisdiction."

6. I have given my anxious thoughts to the submissions made on behalf of the parties and perused the relevant records.

7. The parties have also filed separate compilation with the copies of certain documents. Terms and conditions of the lease agreement provide for independent liability of the petitioner for the payment of the amount secured. Learned counsel for the petitioner took me through the lease agreement dated 17-10-1994 and sanction letter for the loan dated 7-10-94 which clearly show that the loan was sanctioned on 17-10-94 and the lease agreement and letters were prepared between the parties on 17-10-1994. As such, the contention of the learned counsel for the petitioner is that the stamp paper was purchased on 4-8-1994 and on the document the date of execution 17-10-1994 was written with a view to bring the suit within the period of limitation, is not tenable. Learned counsel for the petitioner could not show under what circumstances the suit is barred by limitation except that the stamp paper was purchased by the plaintiff on 4-8-94 and the letters and lease agreement were prepared on 17-10-1994. As such, the contention of the learned counsel for the petitioner that the suit is barred by limitation is not tenable. Moreover, the document has been signed by the plaintiff in the

individual capacity and in view of the admission of the signature the contention that the document was got signed without giving any opportunity of understanding the same does not appear to be probable and tenable.

8. So far uncertainty of the amount as alleged in para 12 of the affidavit filed by the respondent petitioner in view of the terms and conditions of the lease agreement is concerned, it does not appear that the amount was uncertain and that was to be determined on the basis of the terms and conditions of the lease agreement. As such, that argument of the learned counsel for the petitioner is not available to the petitioner. So far as the variations of the terms and conditions as alleged in para 15 of the affidavit are concerned, that would not affect personal liability of the petitioner. Even the amount of the respondent was secured by the equipments and machineries of the company.

9. After considering the evidence on record the Court below came to the conclusion that the present case falls in that class of the cases which is herein referred to the category (e) of the guidelines enunciated by the Apex Court. Imposition of condition to deposit the amount in the Court before proceeding further is justifiable and the Court below agreed with the contention of the learned counsel for the petitioner that the conditional leave to defend should be granted whenever triable issue exists in any matter but in the facts and circumstances of the present case, the Court below has not found any issue to be in existence in the matter.

10. Moreover, the Court below has directed the petitioner to deposit Rs.35,00,000/- which is less than the amount of 15% of Rs.2,64,57,162-64 the entire claim of the respondent and that amount is not unreasonable in the facts and circumstances of the case. It is a settled law that if the Court has jurisdiction to grant conditional leave to defend and that has been exercised, that may be erroneous or not, there cannot be said to be a jurisdictional error which is required to be corrected in the revisional jurisdiction. Moreover, as the amount of Rs.35,00,000/- has been directed to be deposited by the conditional leave that amount is not excessive or exorbitant and the Court below has not committed any jurisdictional error or any material irregularity causing grave injustice to the parties.

11. I do not find any reason calling for interference with the order of conditional leave to defend to invoke

revisional jurisdiction of this Court u/s 115 of the Civil Procedure Code. Accordingly, this Revision Application is dismissed, in limine.

Date:- -7-1999. (Kundan Singh, J.)

/JVSatwara/